IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY FIRST DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO : 23099 of 2004

AND

WRIT PETITION NO. 23106 of 2004

W.P.No. 23099 of 2004

Between:

Sanaga Blakrishnaiah, S/o. Thirumalaiah,
Muthyalampadu, Chillakur Mandal, Nellore District.

..... PETITIONER

AND

1 State Election Commissioner, Andhra Pradesh, Hyderabad.
2 District Collector and District Election Authority, Nellore, Nellore District.
3 District Panchayat Officer and Additional District Election Authority, Nellore, Nellore District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, order, or direction more particularly one in the nature of writ of Mandamus, directing the respondents to conduct Bye Election to the Office of casual vacancy of Sarpanch of Muthyalampadu Gram Panchayat under the revised Electoral Rolls prepared as per special summary revision of Electoral Rolls with reference to 1-1-2005 as qualifying date, as published in Circular Rc.C8.No. 2593/2004, dated 06-07-2004, by the Collector & District Election Officer, Nellore, in respect of Muthyalampadu Gram Panchayat, Chillakur Mandal, forming part of 132 Gudur (S.C) Assembly Constitutency- Poling Centres 94 and 95, and pass such other order or orders.

Counsel for the Petitioner:MR.P.KRISHNA REDDY

Counsel for the Respondent No.2 and 3: GP FOR PANCHAYAT RAJ & RURAL DEV.

Counsel for the Respondent No.1: Mr.K.G.K.Prasad

W.P.No. 23106 of 2004:

Between:

Gopishetti Srilakshmi, W/o Ramakrishna,
R/o 10-28.Narsipatnam Village & Mandal, Visakhapatnam District.

..... PETITIONER

AND

1 The District Collector, Visakhapatnam.
2 The Electoral Registration Officer and Revenue Divisional Officer, Narsipatnam, Visakhapatnam.
3 The District Panchatyat Officer, Visakhaptnam District.
4 Secretary, State Election Commission, 3rd Floor, Budha Bhavan, M.G. Road, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order, direction or Writ, more particularly one in the nature of Writ of Mandamus declaring that the action of the fourth respondent in issuing notification No. 84/SEC-B2/2004-05 dated 9-12-2004 to conduct election to the post of Sarpanch Gram Panchayat, Narsipatnam without considering the claim application dt. 17-11-2004 filed by the petitioner along with others for inclusion of their names in the Voters list of Narsipatnam Gram Panchayat and without publishing final voters list is illegal, arbitrary and against the Rule 6 of A.P. Panchayat Raj (Preparation and Publications of Electroal Rolls) Rules, 2000 and consequentially direct the respondents to include their names in the voters list of Narsipatnam gram panchayat and conduct the elections to fill the casual vacancy of Sarpanch of Narsipatnam Gram Panchayat with the revised voters list and pass such other or orders.

Counsel for the Petitioner:MR.P.PRABHAKAR REDDY

Counsel for the Respondent Nos.1 to 3: GP FOR PANCHAYAT RAJ & RURAL DEV.

Counsel for the Respondent No.4: Mr. K.G.K.Prasad

The Court at the stage of admission made the following

COMMON ORDER:

In these two writ petitions, notifications issued to conduct elections to fill the casual vacancies in the Gram Panchayats of Mutyalampadu of Nellore district and Narsipatnam of Visakhapatnam district are assailed. Though the election notification, as such, is not challenged in W.P.No.23099 of 2004, arguments are advanced canvassing the validity of the same after it was made known to the petitioner herein.

Elections to both the Gram panchayats were held in the year 2001. Sri M. Subbaramireddy was elected as Sarpanch of Mutyalampadu Gram Panchayat died on 18.06.2004. One Chellayamma was elected as Sarpanch of Narsipatnam village died on 20.04.2004. The State Election Commission initiated steps to fill these vacancies as well as the vacancies in other Gram Panchayats through out the State in accordance with the provisions of the A.P.Panchayat Raj Act, 1994 (for short 'the Act'). The necessary notifications were issued on 09.12.2004 notifying the election programme.

W.P.No.23099 of 2004 is filed by an elector of the Gram Panchayat. According to him, the revision of electoral roll was undertaken, in pursuance of a notification issued by the District Collector on 06.07.2004, and according to the programme fixed there under the final revised electoral roll would emerge only

on 01.01.2005 and it is impermissible to hold elections before that date. It was alleged that in the electoral roll published for the recent general elections, several names were deleted and steps have been initiated for revision of the electoral roll for 132 Gudur Assembly Constituency in which Mutyalampadu Gram Panchayat is situated. A writ of mandamus is sought for a direction to the respondents to conduct the election to fill the casual vacancy of Sarpanch only after the final electoral list is published, in pursuance of a notification dated 06.07.2004 issued by the Collector.

The grievance of the petitioner in W.P.No.23106 of 2004 is that her name has been omitted from the voters' list without any basis and though she has submitted an application dated 17.11.2004 for inclusion of her name, no steps have been taken thereon. She alleges that she intends to contest to the office of the Sarpanch of Narsipatnam Gram Panchayat, for which by-election is proposed to be conducted.

On behalf of the respondents, counter-affidavits are filed. It is stated that the election notifications were issued only after electoral rolls for the Gram Panchayat were revised in accordance with Section 11 of the Act and A.P. Panchayat Raj (Preparation and Publication of Electoral Rolls) Rules, 2000 (for short 'the Rules'). It is stated that once an election notification is issued, it is impermissible to stall the elections. It is further contended that the electoral rolls were published on 10.11.2004 and an opportunity was given to the affected parties for submission of their claims, either for inclusion or exclusion of names in the voters' list, and that all the eligible claims have been attended to. It is further alleged that the revision of electoral roll for all the assembly constituencies in general is a different exercise and has nothing to do with the holding of present elections.

Sri P. Krishna Reddy, learned counsel for the petitioner in W.P.No.23099 of 2004, submits that the State Election Commission directed summary revision of electoral rolls in the State of Andhra Pradesh, through its order dated 02.06.2004, and in pursuance of the same, the District Collector, Nellore issued a Circular dated 06.07.2004 notifying various stages of such revision. According to him, the programme is to commence from 01.07.2004 and end with 03.01.2005 with the publication of final electoral rolls. He submits that

under Section 11 of the Act, the same revision would apply for the purpose of holding the elections to the offices of Sarpanch including a casual vacancy thereof and in that view of the matter the whole election process is vitiated.

Supplementing these arguments, Sri P. Prabhakar Reddy, learned counsel for the petitioner in W.P.23106 of 2004, submits that the petitioner has been trying her best to get her name included in the electoral roll and despite her application dated 17.11.2004, no orders have been passed thereon. He submits that even while publishing the electoral roll for Gram Panchayat, it was indicated that claims for inclusion or exclusion of names would be entertained, and in that view of the matter, no final and valid electoral list can be said to have been published as yet.

Learned Government Pleader for Panchayat Raj, on the other hand, submits that an independent revision of electoral rolls was undertaken by the competent authorities for the purpose of holding elections to fill the casual vacancies and that it has nothing to do with the general revision of electoral rolls for the assembly constituencies. He contends that the concept of draft and final voters' list does not apply to the electoral rolls for a Gram Panchayat, in view of the amendment to the Act through Act No.26 of 2000. He contends that once an election notification is issued, it cannot be interfered and the only course open to the petitioners is to avail the remedy provided for under the Act.

The Act provides for election of Sarpanch and members to a Gram Panchayat. Whenever a casual vacancy occurs for such offices, the State Election Commission is empowered to conduct elections to fill such vacancies. Before any election is held, whether to fill up a casual vacancy or in general, preparation and publication of electoral roll is mandatory. Sub-section (2) of Section 11 of the Act makes it clear. According to sub-section (1) thereof, such part of the electoral roll for the assembly constituency, as it relates to the village or any portion thereof, comprising the Gram Panchayat, shall constitute the electoral roll for that Gram Panchayat concerned. Any revisions effected to the same under Sections 22 and 23 of the Representation of People Act, 1950 (for short 'the R.P.Act') up to the date of election notification shall enure for the benefit of the elections to the Gram Panchayat also.

For the purpose of revising the electoral rolls for the Gram Panchayat, the

State Election Commission is conferred with the power to prescribe the qualifying date and whenever the electoral roll is published duly undertaking such revisions, it shall remain in force till it is revised and published.

The State Election Commission proposed to hold the elections to fill all the casual vacancies of Sarpanchs or members, in the State. Accordingly, it issued a notification dated 29.10.2004 directing the District Panchayat Officers of the districts concerned to prepare and publish the voters' list of the respective Gram Panchayats, on 10.11.2004. 01.01.2005 was prescribed as qualifying date for preparation and publication of such voters' list. It is not in dispute that the respective Panchayat Officers have published such lists on 10.11.2004.

The contention of the petitioner in W.P.No.23099 of 2004 is based on a similar notification issued by the State Election Commission on 02.06.2004. It was for the purpose of general revision of electoral rolls of all the assembly constituencies. That process was undertaken under the provisions of the R.P.Act. The preparation of voters' list under Section 11 of the Act cannot be equated to the one under the R.P.Act. The procedure and parameters differ substantially. By making a reference to the process of revision of voters' list under the R.P.Act, which is half way through, it is sought to be urged that till the same is completed, no elections can be held. Under Section 11 of the Act, the electoral roll prepared for an assembly constituency is made applicable for holding elections to Gram Panchayats also. The revision of electoral rolls under the Act on the one hand, and the R.P.Act on the other, differ substantially from each other. Section 11 of the Act, which provides for publication of a draft electoral roll, has been amended by omitting the word 'draft'. Only one publication is contemplated under the amended Section 11 of the Act. There is some force in the contention of the petitioners that once claims are permitted after publication of a voters' list, it has to be treated as draft and the final roll can be said to have emerged only after a revised list is published, duly taking into account the claims of the affected parties. Further, though the word 'draft' was omitted, from Section 11 of the Act, the corresponding changes were not brought about in the rest of that provision or the Rules. That, however, is besides the issue for the present. As of now, the law provides for the publication of only one list and the same has to be accomplished on

10.11.2004. The fact that claims were entertained subsequent thereto and the claim of the petitioners was not accepted does not have any impact on the validity of the election notification. There is nothing in the Act or the Rules, which mandates that an electoral roll has to be published once again after considering the claims of the persons for inclusion or exclusion of their names in it. In that view of the matter, it cannot be said that there is any material irregularity in the election notifications.

Further, a clear bar is imposed under Article 243-O of the Constitution of India against interference in the election to the Gram Panchayats, except by way of election petitions, as provided for under the law made by the State Legislature, namely the Panchayat Raj Act.

In that view of the matter, the writ petitions are dismissed. There shall be no order as to costs.

21.12.2004

Note:LR copy to be marked

(BO)ksld

One fair copy to the Hon'ble Sri Justice L.Narasimha Reddy

(For His Lordships kind perusal)

To

1 State Election Commissioner, Andhra Pradesh, Hyderabad.
2 District Collector and District Election Authority, Nellore, Nellore District.
3 District Panchayat Officer and Additional District Election Authority, Nellore, Nellore District.

4 The District Collector, Visakhapatnam.
5 The Electoral Registration Officer and Revenue Divisional Officer, Narsipatnam, Visakhapatnam.
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